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## BEFORE THE ARIZONA CORPORATION COMMISSION 34

Arizona Corporation Commission

WILLIAM A. MUNDELL  
CHAIRMAN  
JIM IRVIN  
COMMISSIONER  
MARC SPITZER  
COMMISSIONER

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OCT 08 2002

AZ CORP COMMISSION  
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IN THE MATTER OF THE APPLICATION OF  
ARIZONA PUBLIC SERVICE COMPANY FOR  
AN ORDER OR ORDERS AUTHORIZING IT  
TO ISSUE, INCUR, OR ASSUME EVIDENCES  
OF LONG-TERM INDEBTEDNESS; TO  
ACQUIRE A FINANCIAL INTEREST OR  
INTERESTS IN AN AFFILIATE OR  
AFFILIATES; TO LEND MONEY TO AN  
AFFILIATE OR AFFILIATES; AND TO  
GUARANTEE THE OBLIGATIONS OF AN  
AFFILIATE OR AFFILIATES

DOCKET NO. E-01345A-02-0707

**REPLY TO RESPONSE OF ARIZONA  
PUBLIC SERVICE CO. TO RELIANT  
RESOURCES, INC.'S MOTION TO  
INTERVENE**

Reliant Resources, Inc. ("Reliant") hereby replies to the Response of Arizona Public Service Company to Motions to Intervene by Panda Gila River L.P., et al. In its Response, Arizona Public Service Company ("APS") attempts to shroud the merchants' motions to intervene in a cloud of bad motives and manipulation of the system. Despite attempts by APS to color the motives of the merchant intervenors, the fact remains that pursuant to A.C.C. R14-3-105, Reliant is "directly and substantially affected by the purposed financing by APS of its affiliate, Pinnacle West Energy Corporation ("PWEC"). This proceeding arose as a result of a prior proceeding in which the merchant intervenors were parties. In addition, Reliant's own position in the market place could be affected by the financing by APS of its merchant affiliate.

1           **I. THE EFFECT OF APS' FINANCING ON RELIANT IS "DIRECT"**  
2           **AND SUBSTANTIAL**

3           This proceeding arose out of a prior proceeding, which involved Reliant and  
4 other merchant intervenors. This fact, in and of itself, supports Reliant's assertion that APS'  
5 financing application directly affects Reliant's interests.

6           Although APS attempts to characterize its financing of its affiliate as "the mere  
7 act of APS borrowing money or providing a corporate guarantee" (see Response at p. 3), the  
8 effects of this "mere act" may be far reaching and directly affect the interest of Reliant.  
9 Reliant, as both a customer of APS and a potential competitor with Pinnacle West Energy  
10 Corporation ("PWEC") to sell power to APS (and others), has a direct interest in whether  
11 APS' application is "for lawful purposes which are within the corporate powers of the  
12 applicant, are compatible with the public interest, with sound financial practices and with the  
13 proper performance by the applicant of service as a public service corporation and will not  
14 impair its ability to perform that service." A.R.S. § 40-301(C).

15           While APS and the other merchant intervenors are involved in providing a  
16 public service, the existence of all these parties and the public interest are served by healthy,  
17 active competition in the market place, including the ability of affected entities to be involved  
18 in market changes that specifically effect their ability to compete. In order to maintain this  
19 ability, Reliant has an interest in ensuring that the public interest is advanced and that  
20 PWEC's private concerns do not override the best interest of the public.

21           Reliant has a substantial and direct interest in ensuring APS is not creating a  
22 market place in which PWEC has an unfair advantage. APS wants the Commission to believe  
23 that Reliant just wants to eliminate another competitor. This is patently untrue and  
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1 misleading. There is a vast difference between an open competitive market and a market in  
2 which one or two "competitors" unfairly dominate the market.

3 APS attempts to illustrate that Reliant's interest is not substantial by relying  
4 upon three out of jurisdiction cases. First, none of the authorities are binding on the  
5 Commission. Second, they are contrary to the Commission's long-established precedent of  
6 liberally granting intervention. Third, they are distinguishable. For example, In Re Ohio  
7 Power Company, 148 PUR 4<sup>th</sup> 447 (1993), involved a motion to intervene in Ohio Power's  
8 request to approve a lease agreement involving the construction and lease of scrubbers, which  
9 Ohio Power was required to install. Therefore, attempts to intervene by the Industrial Energy  
10 Consumers and the Sierra Club were denied because no impact would occur except after  
11 further order of the Commission and any prolonged delay in complying with acid rain  
12 requirements was not in the public interest. The Washington case, In the Matter of the  
13 Petition of GTE Northwest Incorporated for Depreciation Accounting Changes, 1997 Wash.  
14 UTC LEXIS 25, involved an accounting order. The Washington Commission expressly  
15 concluded it was precluded from considering the impact of depreciation rates on competition  
16 in the proceeding. Such is not the case in the present case, where compatibility with the  
17 public interest must be determined.  
18

## 19 II. CONCLUSION

20 In its Response, APS mischaracterizes the motives of Reliant and the rest of the  
21 merchant intervenors. APS contends the requests for intervention is the beginning of "yet  
22 another war of attrition against the Company." (See Response at p. 7). That is not what is  
23 going on here. Reliant, like any other responsible and proactive company, is attempting to  
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1 protect its interests as a customer of APS and competitor of PWEC in ensuring that the  
2 financing is legal and proper.

3 Therefore, Reliant requests that its Motion to Intervene be granted.

4 Respectfully submitted this 3rd day of October, 2002.

6 MARTINEZ & CURTIS, P.C.

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1 Original and 13 copies of the foregoing filed this 3rd day of October, 2002, with:

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